

**RESOLUTION OF THE MUNICIPAL LAND USE BOARD  
THE BOROUGH OF EMERSON**

**In the matter of:**

**LAURA RODRIGUEZ  
23 FRANKLIN COURT  
BLOCK 801.04, LOT 3  
EMERSON, NEW JERSEY**

**WHEREAS**, Laura Rodriguez (“Applicant”) has made application to the Municipal Land Use Board of the Borough of Emerson (the “Board”) for site plan and variance approval to construct an addition to the existing single-family home on the subject property located at 23 Franklin Court, Block 801.04, Lot 3 on the Tax Assessment Map of the Borough of Emerson (the “Property”); and

**WHEREAS**, the Property is located in the R-7.5 Residential Single-Family Zone of the Borough of Emerson; and

**WHEREAS**, the application requires the following variance relief from the requirements of the Emerson Zoning Ordinance in the R -7.5 Zone: as to side yard setback, whereas 15’ is required and 5.09’ is proposed; as to driveway width, whereas maximum permitted width is 22’ and 29’ is proposed; and as to impervious coverage, whereas maximum impervious coverage permitted is 15% and 29% is proposed; and

**WHEREAS**, the Applicant has filed the appropriate application materials timely; and

**WHEREAS**, the Applicant has presented satisfactory proof to the Board that Notice of the application was published and served in accordance with the Municipal Land Use Laws of the State of New Jersey; and

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**WHEREAS**, the Board reviewed this matter at a remote online public hearing on May 20, 2021; and

**WHEREAS**, based upon the sworn and qualified testimony of John Ferraro, RA, of John Anthony Ferraro Architects, 37 Maple Avenue, New City, New York 10956, the Board made the following findings of fact:

- a. Mr. Ferraro testified generally with regard to the architectural plans he prepared. The property has a single family, two story frame and brick home with an attached garage on the lot. The Applicant is proposing to construct an addition located in the side yard which will include a bedroom, den, laundry room, kitchen and family room.
- b. Applicant and her husband have two young children. Applicant's mother assists with the care of the children and her father is a disabled veteran.
- c. The home as it currently exists is too small for the needs of the family. Applicant is seeking living quarters for her parents on the first floor of the addition and additional bedroom space in the proposed second floor.
- d. The addition was designed to be consistent with a number of other homes in the neighborhood and has no negative impact on neighboring properties.
- e. The lot has a number of existing non-conformities and the application requires the following variance relief: as to side yard setback, whereas 15' is required and 5.09' is proposed; as to driveway width, whereas maximum permitted width is 22' and 29' is proposed; and as to impervious coverage, whereas maximum impervious coverage permitted is 15% and 29% is proposed.

- f. With regard to the Board concern's as to excess impervious coverage, a water management system will be installed to avoid water damage to neighboring properties. Applicant has submitted a water management plan to address the increased impervious coverage.

**WHEREAS**, Applicant, Laura Rodriguez, 23 Franklin Court, Emerson, New Jersey appeared, was sworn and testified in support of the application as follows:

- a. Applicant is the owner of the subject property.
- b. Applicant and her husband have two young children. Applicant's mother assists in the care of the children. The home as it currently exists is too small and does not provide adequate space for their needs Applicant is seeking additional bedroom space in the proposed second floor and living quarters for their parents on the first floor. The addition is also being proposed for the comfort of Applicant's father who is a disabled Veteran, requiring 24-hour assistance. The proposed addition will greatly improve the living conditions for the family.
- c. The addition would be consistent with a number of other homes in the neighborhood.
- d. There are no traffic issues created by the proposed addition.
- e. In response to a question by a Board member regarding the minimal setback on the side of the home and the safety issues raised by the Fire Chief, Applicant stated that the side of the property would have a walkway with no obstructions. Applicant agreed to a condition in the Resolution that would forbid any future owners from making any changes to that side of the home.

- f. No other variances are required or being sought as a result of the proposed addition.
- g. Applicant agrees to keep all toys, games, etc. away from the narrow setback, as well as any plantings and any other obstruction.
- h. Applicant also agreed to abide by all the recommendations of the Borough Engineer.

The Chair noted that the side of the home with the addition/garage would only be a single story, and the opposite side of the residence would have the second story addition. Therefore, there is sufficient room for fire equipment on that side.

**WHEREAS**, after due consideration and deliberation at the aforementioned hearings, the Board did vote in favor of the Application and did instruct the Board Attorney to prepare a Resolution memorializing the vote taken;

**WHEREAS**, pursuant to N.J.S.A. 40:55D-10g, a decision must be reduced to writing and shall include findings of fact, based upon the evidence presented at its public hearings; and

**WHEREAS**, the Municipal Land Use Board of the Borough of Emerson makes the following factual findings and conclusions:

- 1) The Applicant is the owner of the Property located at 23 Franklin Court, Block 801.04, Lot 3.
- 2) The Property is located in the R-7.5 Residential Single-Family Zone.

3) The Applicant proposes to construct an addition located in the side yard of the single-family, two story home, which will include a bedroom, den, laundry room, kitchen and family room.

4) The property contains certain existing non-conforming conditions, and the application requires the following variance relief: as to side yard setback, whereas 15' is required and 5.09' is proposed; as to driveway width, whereas maximum permitted width is 22' and 29' is proposed; and as to impervious coverage, whereas maximum impervious coverage permitted is 15% and 29% is proposed.

5) The Municipal Land Use Law, N.J.S.A. 40:55D-1, et seq., gives the Board the power, when reviewing applications for bulk variances, to grant variances in accordance with N.J.S.A. 40:55D-70(c). In order for the Board to grant variances, however, the applicant must demonstrate either: (1) hardship arising out of the exceptional narrowness, shallowness, shape or exceptional topographic conditions of a specific piece of property; or (2) that the purposes of the Municipal Land Use Law would be advanced by a deviation from the requirements of the ordinances and that the benefits of granting a variance would outweigh any detriment to the public good (the "positive criteria"). The applicant must further demonstrate that granting the requested variance relief will not impair the intent and purposes of the zone and master plan and the zoning land use ordinances (the "negative criteria"). As in all variance cases, the applicant has the burden of establishing both criteria to the satisfaction of the Board.

6) The Board finds from the above testimony and evidence presented by the Applicant that the application satisfies the positive and negative criteria. The construction of the addition is an aesthetic improvement. The addition improves the home and is consistent with homes in the Rodriguez

neighborhood and there is no negative impact from same. The Applicant has met its burden of demonstrating the positive and negative criteria to justify granting of the bulk variances and therefore the Applicant's request conforms within the requirements of the Borough and may be granted without substantial detriment to the public safety, health and general welfare and will not deter the efforts of the Borough to effectuate the general purposes of municipal planning.

**NOW, THEREFORE, BE IT RESOLVED** by the Municipal Land Use Board of the Borough of Emerson that the Application of Laura Rodriguez with respect to the subject Property requesting minor site plan and variance approval be and is hereby **APPROVED** subject to the terms and conditions hereinafter set forth:

**STIPULATIONS AGREED TO BY APPLICANT**

- 1) Applicant stipulates and agrees to keep all toys, games, plantings and any other obstruction away from the narrow setback.
- 2) Applicant stipulates and agrees to abide by all the recommendations of the Borough Engineer.

**CONDITION SPECIFIC TO THIS APPLICATION**

- 1) Any future owner of the subject property shall not be permitted to make any other changes to the side of the home containing the walkway.

**GENERAL CONDITIONS:**

- 1) The foregoing findings of fact and conclusions of law are incorporated herein as if set forth at length.

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2) In reviewing the Application, the Board concludes that the proposed variances comply with the Municipal Ordinances and the Municipal Land Use Law.

3) Approval as necessary from the Bergen County Planning Board. If any material changes are required by Bergen County Planning Board to what is approved by this Resolution, said changes are to be brought by the Applicant on a forthwith basis before this Board, which retains jurisdiction over the Application.

4) Approval from the Bergen County Soil Conservation District if applicable.

5) Approval from the Emerson Police if applicable.

6) The Applicant shall at all times comply with the applicable rules, regulations, ordinances and statutes of the Borough of Emerson, County of Bergen, State of New Jersey and the Federal Government with regard to the construction of the Property including but not limited to the Americans with Disabilities Act.

7) The Applicant shall obtain all other required permits and approvals, inclusive of but not limited to the Applicant's satisfaction of the Ordinances imposed conditions which relate to tree removal and replacement and water drainage.

8) Building permits as needed must be obtained before any work begins at the site and in accordance with the approval(s) conferred herein.

9) The Applicant shall comply with any and all conditions and requirements rendered by this Board's Engineer and/or the Borough's Engineer and the Construction Code Official.

10) The Applicant shall comply with any and all other federal, state, county and local government rules and regulations regarding the subject application, including, but not necessarily limited to, the payment of all fees and charges as established by the Borough of Emerson for the application and as applicable compliance with all sign ordinances and the payment of any and all COAH fees and charges.

11) Nothing contained in this Resolution shall supersede the provisions of the Uniform Construction Code of the State of New Jersey or any other applicable law or regulation.

12) Any damage to the public areas, including streets, curbs or sidewalks, a result of the construction of the additions and site work must be remediated to the satisfaction of the Borough Engineer.

13) Applicant agrees to comply with all conditions of the Borough Engineer.

**BE IT FURTHER RESOLVED** that this Resolution does not constitute approval or recommendation for approval for any variance or any exception not requested by the Applicant, nor any variance or exception which may not be expressly or specifically created by this Resolution.

**NOW THEREFORE, BE IT RESOLVED** that the Chairman and Secretary of the Board are hereby authorized to affix their signatures to this Resolution granting the requested application, to advertise the action taken, by way of Resolution, in the local newspaper, and furthermore to send certified copies to the Zoning Officer, Construction Code Enforcement Official and/or Building Sub-Code Official, the Applicant and/or the Applicant's attorney, the subject property

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Owner if other than the Applicant, and to the Borough Attorney, Borough Engineer and Board Engineer.

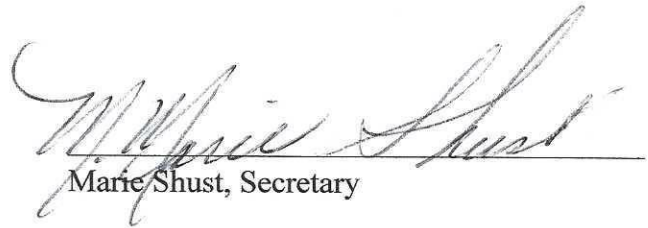
The undersigned certifies that the within Resolution was adopted by the Board and memorialized herein pursuant to N.J.S.A. 40:55D-10(g) on June 3, 2021.

Dated: June 3, 2021



Jeff Bischoff, Chairman  
Emerson Land Use Board

Dated: June 3, 2021



Marie Shust, Secretary

OFFERED BY: Vice Chairman Myers

SECONDED BY: Chairman Bischoff

VOTE: Ayes: 2

Nays: 0

Abstain: 0